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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/881,172      | 06/14/2001  | Christoph Foth       | 08920 - US          | 6781             |

7590 02/12/2004

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| EXAMINER |
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| ART UNIT | PAPER NUMBER |
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3671

DATE MAILED: 02/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/881,172

Applicant(s)

FOTH, CHRISTOPH

Examiner

Árpád Fábián Kovács

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-16 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim(s) 1-8, 10-15, and new claim 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Baumgarten et al (5569081).

It is noted that, the Applicant provided changes to the drawings, among others a wind sensor (112), and a ground inclination sensor (114), and stated that one skilled in the art would know the use of these devices in combination of the distributing device. While claim 11 & 14 do not require (functional recitation: "can be") any of these devices, on the other hand claim 11 and 12, appears to further define whether the motor pivots as a function of a wind direction (cl. 11) or inclination of the ground (cl. 12). In view of the functional recitation of a function suggested by the Applicant as known to one the Applicant considers skilled in the art (Remarks made 6/20/2003, pg 3, paragraphs 2-4), as a result these claims (cl 11-12, 14-15) considered to not recite any limitations requiring further examination and/or consideration; please note Examiner's comment below.

In re independent claims 1, 13, Baumgarten discloses a chopper and distribution device supported by frame of an agricultural combine used for typical harvester threshing/separating and distributing operation (fig 1 & 6, not numbered threshing,

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separating assembly; chopper at cutter drum ref 30, also, col. 2, lines 54-55, fig 4-5),  
the distribution device comprising:

at least one guide vane and/or guide vanes (plates, ref 32);

a drive (35 and/or 35A and/or 35B), however, the drive maybe just a shaft moving the vanes back and forth, not numbered elements/drive shafts coupled to the motor ref 35 being the regulating motor (in re claim 10), operatively coupled to the guide vanes continuously moves the vanes back and forth (as shown on fig 5; and/or fig 2, refs 35A or 35B);

in re claim 2, the drive pivots the vanes about a vertical axis (axis 32A);

in re claim 3, the guide vanes are arranged transversely alongside each other and are connected to the drive (see fig 2-3; col 3, lines 35-40);

in re claim 4, the vanes are pivoted back and forth by an element (for example embodiments shown in fig 3 and/or 5, disk ref 36) which is rotated by the drive;

in re claim 5, a connecting rod that extends between the guide vanes (the rod which extends between the struts 33A-B and the element as best shown on fig 3) and a pin located in a hole in the element (a radially extending slot/aperture/hole at pin or fixing screw 36B as shown on fig 3);

in re claim 6, the hole of the element is a radially extending elongated hole (as shown on fig 3 at pin/screw 36B) and the pin can be locked in the elongated hole in various radial positions (by definition screw 36B allows to be locked, and also see col 3, lines 62-63);

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in re claim 7, the guide vanes are connected to a strut (33A-B) which in turn is connected to the connecting rod (see fig 3), the guide vans can be locked to the strut so that the guide vanes can be repositioned (the vanes are locked to the struts, and the vanes can be repositioned as in col 3, lines 35-40);

in re claim 8, the guide vanes are connected over a connecting element with the strut (as best shown on fig 3, at connecting points to the strut), the distributing device is provided with a housing (31) having a top wall with an upper surface, the vanes are in sliding contact with the upper surface of the top wall (as best shown on fig 4, at ref 32; in fig 2-3, 5 & 7 is clearly shown as the guide vanes are in slidingly arranged on the upper surface of the top wall).

The method described in claim 16 is inherent in view of the structure disclosed above.

***Allowable Subject Matter***

3. Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

4. Applicant's arguments 1/20/2004 have been fully considered but they are not persuasive.

Applicant's argument that Baumgarten does not have a motor or as recited in the actual claim 1: "a drive operatively coupled ...", however as provided for in the rejection, ref 35, and/or other drives shown in other embodiments ref 35A and/or 35B do provide for a drive; the Applicant further states that the prior art does not meet: "continuously moves the guide vane back and forth," is not agreed with, since in fig. 3, the arrow clearly shows the back & forth movement, similarly using any of the drives (which does not have to be an actual motor as claimed in claim 1) does provide for the functional aspect of the claim.

In re Applicant's arguments on page 5, last paragraph, the Examiner notes that in prior office actions objections were made to the limitations recited in claims 11-12 & 14-15, since structural elements are needed, which appeared to be not disclosed and/or shown; therefore, if the Applicant claims a subject matter not known before, therefore not inherent, then the claim language should provide support along with the disclosure & drawings for those features.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Árpád Fábián Kovács whose telephone number is 703-308-5897. The examiner can normally be reached on Mo-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308 3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Árpád Fábián Kovács  
Primary Examiner  
Art Unit 3671

ÁFK